MT LEGISLATIVE HISTORY

Chapter 489 19 25

Bill (H) 341 S _____ Original bill & hist. ✓C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) Feb 01	✓C	Hearing Date(s) Mar 14	✓C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb 01	✓C	Mar 14	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

INTRODUCED BY Hauge Sheldon Bradley Stolz Kuble Day Hanneman Bertelsen BILL NO. 341

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE OPEN SPACE LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608, 67-601, AND 67-602, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 62-601, R.C.M. 1947, is amended to read as follows:

"62-601. Short title. This act ~~shall-be-known-and~~ may be cited as the "Open-Space Land and Voluntary Conservation Easement Act.""

Section 2. Section 62-602, R.C.M. 1947, is amended to read as follows:

"62-602. Purposes of act. The legislature finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; that the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; ~~that-the-provision-and-preservation-of-permanent-open-space-land-are--necessary-to--help--curb--urban-sprawl,-to-prevent-the-spread-of-urban-blight-and--deterioration,--to--encourage--and--assist--more-economic-and-desirable-urban-development,-to-help-provide-or-preserve-necessary-park,-recreational,-historic--and--scenic-areas--and-to-conserve-land-and-other-natural-resources~~ that this population spread and its attendant development is disrupting and altering the remaining natural areas, biotic communities, geological and geographical formations and, thereby, providing the potential for the destruction of scientific, educational, aesthetic, and ecological values; that the present and future rapid population spread throughout the state of Montana into its open-spaces, are creating serious problems of lack of open-space and overcrowding of the land; that to lessen congestion and to preserve natural, ecological, geographical and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographic elements in their natural state; that the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve ~~permanent~~ open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of authority to acquire or designate interests and rights in

INTRODUCED BILL

real property to provide or preserve ~~permanent~~ open-space land and the expenditure of public funds for these purposes would be for a public purpose~~.~~; and that the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

~~Pursuant--to~~ In accordance with these findings, the legislature states that the purposes of this act are to authorize and enable public bodies and certain qualifying private organizations voluntarily to provide ~~and--preserve permanent--open-space-land-in-urban-areas-in-order-to-assist in-the-solution-of-the-problems-and-the--attainment--of--the objectives--stated--in--its-findings~~ for the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic or educational interest, and to provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years, and, furthermore to encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this act."

Section 3. Section 62-603, R.C.M. 1947, is amended to read as follows:

"62-603. Definitions. The following terms whenever

used or referred to in this act shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) "Public body" means the state, counties, cities, towns and other municipalities.

(b) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(c) "Open-space land" means any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

(d) "Comprehensive planning" means planning for development of an urban area and shall include: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together

with long-range fiscal plans for such development; (2) programming and financing plans for capital improvements; (3) co-ordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in support of the foregoing.

(e) "Conservation easement" means an easement or restriction running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction, any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than fifteen (15) years. An easement granted for a term of years may be renewed for a term of fifteen (15) or more years upon the execution of a new granting instrument by the parties.

(f) "Qualified private organization" means a private organization: (1) competent to own interests in real property, and; (2) which qualifies and holds a general tax exemption under the Federal Internal Revenue Code, section

501 (c) and; (3) whose organizational purposes are designed to further the purposes of this act."

Section 4. Section 62-604, R.C.M. 1947, is amended to read as follows:

"62-604. Acquisition and designation of real property by public body. To carry out the purposes of this act, any public body may (1) acquire by purchase, gift, devise, bequest or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of ~~permanent~~ significant open-space land, ~~and~~ or the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both, (2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of ~~permanent~~ significant open-space land~~.~~; ~~The use of the real property for permanent open space land shall conform to comprehensive planning being actively carried on for the urban area in which the property is located.~~ or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interests, or both.

Where a public body acquires under this act an interest in land less than fee, this acquisition shall be by

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conservation easement. Public bodies holding conservation easements shall enforce the provisions of these easements."

Section 5. Section 62-605, R.C.M. 1947, is amended to read as follows:

"62-605. Conversion or diversion of open-space land, where prohibited--substitution of other realty--conveyance or lease of open-space land authorized. ~~(a)~~ (1) No open-space land, the title to, or interest or right in which has been acquired under this act ~~or--which--has---been designated--as--open-space--land-under-the-authority-of-this act~~ shall be converted or diverted from open-space land use unless the conversion or diversion is: ~~determined-by-the public-body-to-be-(1)-essential-to-the--orderly--development and-growth-of-the-urban-area,-and-(2)-in-accordance-with-the program--of--comprehensive--planning--for--the-urban-area-in effect-at-the-time-of-conversion-or-diversion~~ (a) necessary to the public interest; (b) not in conflict with the program of comprehensive planning for the area; and (c) permitted by the conditions imposed at the time of the creation of the conservation easement. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as ~~permanent~~ open-space land shall be substituted within a reasonable period not exceeding one (1) year for any real property converted or diverted from open-space land use.

~~The-public-body-shall--assure--that--the--property~~ Property substituted ~~will--be~~ is subject to the provisions of this act.

~~(b)~~ (2) A ~~public-body~~ grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection ~~(a)~~ (1) of this section."

Section 6. Section 62-608, R.C.M. 1947, is amended to read as follows:

"62-608. Taxation of property subject to conservation easement. ~~where--public--body--owns-less-than-fee.~~ ~~Where-an interest-in-real-property-less-than-the-fee--is--held--by--a public--body--for-the-purposes-of-this-act,-assessments-made on-the-property-for-taxation-shall-reflect-any-change-in-the market-value-of-the--property--which--may--result--from--the interest--held-by-the-public-body.-The-value-of-the-interest held-by-the--public--body--shall--be--exempt--from--property taxation--to--the-same-extent-as-other-property-owned-by-the public-body.~~

Assessments made for taxation on property subject to a

conservation easement either in perpetuity or for a term of years shall be determined on the basis of the restricted purposes for which the property may be used. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than fifteen (15) days after the date of expiration."

Section 7. There is a new R.C.M. section that reads as follows:

Easements -- type allowed. Easement or restrictions under this act may prohibit or limit any or all of the following:

(1) Structures. Construction or placing of buildings, camping trailers, house trailers, mobile homes, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(2) Landfill. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

(3) Vegetation. Removal or destruction of trees, shrubs or other vegetation.

(4) Loam, gravel, etc. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance.

(5) Surface use. Surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition.

(6) Acts detrimental to conservation. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation or fish and wildlife habitat and preservation.

(7) Subdivision of land. Subdivision of land as defined in section 11-3861.

(8) Other acts. Other acts or uses detrimental to such retention of land or water areas in their existing conditions.

(9) The term "land" in subsections (2) and (3) above, includes land under water, and water, and water surface.

Section 8. There is a new R.C.M. section that reads as follows:

Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase or gift, devise, bequest, or grant, title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or

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provision of permanent significant open-space land and/or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interest.

Section 9. There is a new R.C.M. section that reads as follows:

Conservation easements run with the land -- enforceability. The provisions of sections 58-305, 58-306, and 58-307, notwithstanding, for the purposes of this act, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership and no conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement, or because such easement is an easement in gross.

Section 10. There is a new R.C.M. section that reads as follows:

Assignability. For the purposes of this act, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise, and no conservation easement shall be unenforceable on account of the benefit being assignable or

being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership; provided that the assignees must be qualified under the terms of this act to hold a conservation easement.

Section 11. There is a new R.C.M. section that reads as follows:

Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review by the appropriate local planning authority for the county within which the land lies prior to recording. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have ninety (90) days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee, but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority, or the local planning authority has indicated in writing it will have no comments, or ninety (90) days have elapsed, whichever first

occurs.

Section 12. There is a new R.C.M. section that reads as follows:

Recording and description of land. All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries. The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the state department of revenue.

Section 13. There is a new R.C.M. section that reads as follows:

Enforcement. Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

Section 14. There is a new R.C.M. section that reads as follows:

Construction. This section shall not be construed to

imply that any easement, covenant, condition or restriction which does not have the benefit of this act shall on account of any provisions hereof be unenforceable. Nothing in this act shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

Section 15. Section 67-609, R.C.M. 1947, is renumbered 62-617.

Section 16. Section 67-601, R.C.M. 1947, is amended to read as follows:

"67-601. Servitudes attached to land. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.

2. The right of fishing.

3. The right of taking game.

4. The right of way.

5. The right of taking water, wood, minerals, and other things.

6. The right of transacting business upon land.

7. The right of conducting lawful sports upon land.

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.

9. The right of receiving water from or discharging

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the same upon land.

10. The right of flooding land.

11. The right of having water flow without diminution or disturbance of any kind.

12. The right of using a wall as a party wall.

13. The right of receiving more than natural support from adjacent land or things affixed thereto.

14. The right of having the whole of a division fence maintained by a coterminous owner.

15. The right of having public conveyances stopped, or of stopping the same on land.

16. The right of a seat in church.

17. The right of burial.

18. The right of conserving open-space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land."

Section 17. Section 67-602, R.C.M. 1947, is amended to read as follows:

"67-602. Servitudes not attached to land. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right of pasture, and of fishing and taking game.

2. The right of a seat in church.

3. The right of burial.

4. The right of taking rents and tolls.

5. The right of way.

6. The right of taking water, wood, minerals, or other things.

7. The right of conserving open-space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land."

-End-

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HJR 21	Requests the Federal Energy Administration to take immediate action in properly allocating crude oil imported from Canada to refineries here	Jan. 21	Williams	Jan. 28	DO PASS AS AMENDED	Jan. 28
HJR 17	Requests comm. on priorities to assign standing committee to study feasibility of programs to preserve and protect prime agric. and rec. lands.	Jan. 22	VINCENT	Jan. 28	DO PASS	Jan. 28
HB 341	An act amending the open space land act and providing for conservation easements.	Jan. 27	SHELDEN	Feb. 1	DO PASS AS AMENDED	Feb. 1
HB 349	An act to amend the Montana strip mining and rec. act to provide for the protection of certain agricultural lands on valley floors, etc.	Jan. 27	Day	Feb. 4	DO PASS AS AMENDED	Feb. 22
HB 352	An act to make unlawful the use of junked motor vehicles for flood control of a stream or for reinforcement of the banks of a stream.	Jan. 27	Bussault	Feb. 1	DO PASS AS AMENDED	Feb. 1
HB 370	An act to revise the water pollution control laws to conform with federal requirements, etc.	Jan. 28	Meloy	Feb. 6	DO PASS AS AMENDED	Feb. 20 PM

February 1, 1975

The Natural Resources Committee convened at 10:30 am in room 437 on February 1, 1975 with Chairman Bradley presiding and all members present.

Chairman Bradley read a letter of apology from Jack Nichels, legislative aide for Rep. Lien. He said he had been unaware at the last meeting that aides were not permitted to testify at hearings. His letter is exhibit 1.

HB 352 REP. DUSSAULT, chief sponsor, stated her bill made it unlawful to use junked motor vehicles for flood control or to reinforce stream banks. A copy of her testimony is exhibit 2.

JIM POSEWITIZ, Montana Fish and Game, said he rose in support of HB 352 just as he did of earlier bills that dealt with this. He said car bodies do not work for most flood control or reinforcement problems. He passed pictures showing the use of car bodies and this is exhibit 3.*

As there were no opponents the meeting was opened to questions from the committee. Rep. Jack Moore asked concerning places where car bodies have been used and have become buried and helped retain material. Mr. Posewitz responded that these occasions are rare, Shelby area is one.

HB 341 REP. SHELDEN, chief sponsor, introduced the bill. He said it was similiar to his conservation easement bill of the past year with a few changes. He said this is not a new concept--that an owner can voluntarily put restrictions on his land to preserve it for the future--a number of states have it. This easement describes things that will not be done rather than things that can be done. The hope is that it will preserve certain natural values that are now existing for the future. One change from last year's bill was the length of term--it can now be for 15 years or for perpetuity. Rep. Shelden said a number of people would explain the bill further.

ROBERT M. KNIGHT, Five Valley River Park Assn., was the next proponent speaker and his testimony is exhibit 4.

ARNOLD BOLLE, School of Forestry faculty, was the next proponent speaker and his testimony is exhibit 5.

LAND M. LINDBERGH, rancher from Greenough, stated he had been involved in this bill since last year. He said these easements would for the most part involve only small segments of land--five to ten acres, possibly as big as 100 acres. He said they were definitely in favor.

HANK GOETZ, forester from the Blackfoot Valley, stated he had been involved in this conservation concept for the past three or four years and had worked with the private land owners in the Blackfoot Valley. He said the voluntary nature of this bill and having things done on the local level appealed to him and he wholeheartedly favored its passage.

Exhibit 3 no longer available.

TY ROBINSON, Burlington Northern Railroad, stated the railroad people had worked with the proponents of this bill and that the bill in its present form had their support.

JIM RICHARDS, State Planning Division of the IGR, stated they felt this bill accomplishes the goal of protecting the scenic things without getting into the problem of taking private property rights.

JIM GOETZ, representing self, stated this would be a way many ranchers could avoid the incentive to subdivide because instead of having their land taxed on its development value it would be taxed on its agricultural use. He was in favor of the bill and felt it was important.

OPPONENTS
PAUL P. FOCHS, Wheatland County Preservation Assn., stated he objected to the bill because he felt the local planning boards should have more authority--he felt it was defeating the purpose of having a local planning board as this would be setting up another authority to override them.

Rep. Shelden turned the rebuttal over to Mr. Knight. Mr. Knight stated since the easement is voluntary they did not feel the local planning boards should have an absolute veto power.

During questions from the committee it was brought up that with the word "urban" in the definition it might not include rural lands. Mr. Knight said the bill was intended to cover more than metropolitan areas. It was mentioned that one of the recipients of the easement could be the fish and game department, the department of natural resources or Mr. Knight suggested one called Major Conservancy out of Washington, D. C., or others that qualify.

Chairman Bradley requested Rep. Meloy work out an amendment that would ensure the bill would cover nonurban as well as urban lands.

Also signing as opposing the bill were:
Holley Anderson, Wheatland Co. Pres. Assn., exhibit 6.
Wallace Broderson, Ryegate
Gene Spilde, Sweetgrass Pres. Assn.

Chairman Bradley opened the meeting to a consideration of the following bills:

HB 352 Rep. Shelden moved do pass. The motion carried unanimously.

HB 93 The subcommittee, Reps. Shelden, Quilici, Jack Moore, had a suggested amendment. Rep. Shelden read the amendment (page 1, section 1, line 17, following the word "violation" by inserting ", but not more than a total of $5,000") and moved that it be adopted. Motion passed (Rep. Day voting no). Rep. Meloy moved to amend the amendment dealing with page 1, section 1, line 22 following "section." to read "The

commission may institute and maintain in the name of the state enforcement proceedings under this section." This motion passed unanimously. Rep. Meloy then moved that HB 93 as so amended do pass. Motion passed. Voting no were Reps. Fishbaugh, Anderson, Barrett, Day, Ellison, Schye; abstaining was Rep. Jim Moore; absent was Rep. Jack Moore.

HB 341 Rep. Quilici moved to pass. Rep. Meloy made a substitute motion to amend on page 5, section 3, subsection (e), line 21, following "parties." by inserting "A conservation easement may be applied to urban or nonurban land." Motion carried unanimously. Rep. Shelden moved that HB 341 as so amended do pass. Motion passed unanimously.

HB 79 Rep. Huennekens moved do pass. Rep. Luebeck made a substitute motion that on line 11, following "use." insert "Perenially flowing"' and after "rivers" insert "having an average annual flow of at least 10 cubic feet per second." There was discussion. Rep. Day pointed out that this language would eliminate even the Powder River. Chairman Bradley asked if Rep. Luebeck would consider his amendments separately. Roll call was taken on the first amendment to add "Perenially flowing"; motion failed as only Reps. Day, Ellison, Anderson voted yes and absent were Reps. Moore and Meloy. Discussion was made on the second amendment and it was decided by a number of members that more information on stream flow was needed. Rep. Huennekens moved a substitute motion to hold the bill until further information could be had. Motion carried.

Meeting adjourned at 12:30 p. m.

Respectfully submitted,

Dorothy Bradley

Dorothy Bradley, Chairman

eas

NAME _____ Bill No. _____

ADDRESS _____ Date _____

WHOM DO YOU REPRESENT? _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This is not a new concept. There is no legislation that says we can't have conservation easements and none that says we can, so we would like to see this legislation enacted to provide recognition for conservation easements.

Changes in the bill include: page 5, section 3 (f), has a definition of a qualified private organization. This eliminates private individuals, private organizations.

Page 5, section 3 (e), on the term of easement. Gives a choice of the length of easement term--can still be in perpetuity or for 15 years. There are some areas where a perpetual easement would not be the thing to have.

Page 8, section 6, on taxation. Taxes to be assessed on the use that can be made of the property.

Page 12, section 11 was added to allow for review by local planning authority; and section 12 deals with how the easement is to be recorded both with the clerk and recorder with the present land record and also is a separate file. A copy of the easement is to be directed to the department of revenue.

States have provided in terms of a charitable donation for an easement in perpetuity (tax wise). There is an appraisal prior to giving of an easement and one after. There is no federal deduction for a 15 year easement.

NAME ARNOLD BOLLE Bill No HB 341

ADDRESS _____ Date Feb. 1

WHOM DO YOU REPRESENT? On faculty for the School of Forestry
Also Five Valley Park Assoc.

SUPPORT x OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I think if offers an excellent opportunity to preserve some of our open space and retain land in its present use rather than having them forced into subdivisions.

Our Five Alley Park Assn. is looking to hold lands for parks; but also there ~~is~~ are a number of private owners that have shown interest. We have done some exploring in the Blackfoot Valley to size up the interest.

NAME Land M. Lindbergh Bill No. H.B. 341

ADDRESS Greenough, Montana Date _____

WHOM DO YOU REPRESENT? Rancher

SUPPORT Yes OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support this bill #341

NAME Hank Goetz Bill No. HB 34

ADDRESS Greenough, Mont Date 1 Feb 75

WHOM DO YOU REPRESENT? Myself

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This will be a flexible, voluntary method whereby interested individuals can contribute to open-space conservation.

NAME Carl A. Lee Bill No. HB 371

ADDRESS Stevensville, Mont. 59870 Date 2-1-75

WHOM DO YOU REPRESENT? Ravalli County Conservation Association

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Objection is limited to the sweeping of the Local Planning Board

NAME Holly Cordier Bill No HB 301

ADDRESS Pine Dot Mont. Date 2-1-1

WHOM DO YOU REPRESENT? Whitlash Co Property owner

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I feel that this Bill takes away my rights from the land owner. This claim is a law that if any Indian or Corp. owns a land or water right in the Marsh like how the land owner loses part of his water right

43rd LEGISLATIVE SESSION

COMMITTEE ON NATURAL RESOURCES AND FISH & GAME

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
59	2-4-75	3-13 & 3-14	(indefinitely postponed)						
reconsideration 59		3-15 & 3-25	3-25	(Minority and Majority report submitted)					3-25
83	2-4-75	3-13 & 3-14	3-14					3-14	
93	2-10-75	3-6-75	3-6-75					3-6-75	
104	1-27-75	2-27 & 3-18	3-20					3-20	
reconsideration 104	3-26	3-26	3-26					3-26	
153	2-11-75		2-15-75	(Referred to Judiciary Comm.)					
195	2-15-75	3-4-75	3-4-75					3-4-75	
226	2-7-75	3-6-75	3-6-75				3-6-75		
258	2-10-75	3-8-75	3-8-75				3-8-75		
288	2-10-75	2-27-75	2-27-75				2-27-75		
292	2-7-75	3-6-75	3-6-75				3-6-75		
294	2-8-75	2-27-75	2-27-75				2-27-75		
319	3-31								
341	2-11-75	3-14-75	3-14-75				3-14-75		
351	3-18-75	3-18-75	3-18-75				3-18-75		
352	2-7-75	3-8-75	3-8-75				3-8-75		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
NATURAL RESOURCES AND FISH & GAME
MONTANA STATE SENATE

March 14, 1975

The twenty-fifth meeting of the Natural Resources and Fish and Game Committee was called to order by Senator Flynn, on the above date, in Room 405, of the State Capitol Building, beginning at 8:00 p.m.

ROLL CALL: All members were present at tonight's meeting with the exception of Senator Smith who was excused.

CONSIDERATION OF HB 341: An act amending the open space land act providing for conservation easements.

Representative Sheldon, sponsor, stated that this bill will allow for the voluntary dedication of conservation easements by private individuals.

Mr. Robert Knight, attorney -- 5-Valley River Park Association, said this type of legislation has been introduced in previous years. He feels that a genuine effort has been made to draft a good piece of legislation. HB 341 includes better sections; thus, improving the bill. Mr. Knight explained particular sections in the bill:

1. the receipient of the easement has been redefined;
2. the organization is qualified to hold this land;
3. it is a 501 C-3 organization.

Mr. Knight continued by pointing out another change in the easement legislation that has been added. Conservation easements may be granted either in perpetuity or for a term of not less than 15 years. A new section has been added to the bill. It requires all conservation easements be duly recorded in the county. He issued a letter written by Mr. John Crowley, Planning Director for the Missoula Planning Board. (See Attachment #1.)

Mr. A. W. Bolle, President of the 5-Valley River Park Association, testified in favor of HB 341; he feels it includes an additional tool. It would allow landowners to keep their land in its present condition.

Representative Vern Bertelsen, Ovando, stated he was a proponent of the bill.

The proponents stated that Land Lindberg, a rancher from Missoula and a member of the Planning Board, wanted to go on record as supporting this bill. A statement was written by Hank Goetz, co-chairman of the Potomac-Greenough County Planning Advisory Group. It was submitted to the committee. (See Attachment #2.)

Mr. Joe McDowell, Ovando, stated that he supported Mr. Knight's testimony. He said he wanted to emphasize two points of the bill. It is entirely voluntary, and it doesn't involve any action by the state. He feels this act can only benefit the people of this state. It would allow the landowner who grants the easement relinquished rights to have his land enjoyed by others.

Two men who were not present at the meeting but wanted to go on record as supporing HB 341 are:

Mr. James Lucas, Miles City, and Jack Dietrich, Billings.

Mr. Ty Robinson, Burlington Northern Railway, concurs with the philosophy of this bill. He said the railway will not take advantage of this bill.

Senator Manley wanted to go on record as a proponent of the bill mainly because it is strickly voluntary to the landowner.

Mr. Knight explained some of the reasons why a landowner would want to grant these easements. He would receive personal gratification. The easement and perpetuity can result in a tax relief to the landowner.

Senator Galt pointed out the bill could open the way for individuals to take advantage of the tax relief.

Senator Manley feels these people would still preserve this land for the public even though there would be some tax relief involved.

CONSIDERATION OF HB 659: To exempt any political subdivision or agency of the state from bonding requirements of the strip mining reclamation act.

Representative Shelden, author, stated the bill simply proposes that various state departments do not need to require a bond of each other if one department is going to do some work for the other department. The major department concerned is the Bureau of Mines. The advantage of the bill would be to relieve governmental agencies.

Senator Colberg expressed concern in the area around Roundup allowing strip mining.

CONSIDERATION OF HB 369: Act amending the acreage limitation in the definition of a subdivision for sanitary and public health purposes.

Representative Mike Meloy, author of the bill, explained that it is not an amendment to the Subdivision Act. House Bill No. 369 amends the agreage limitation in the definition of a subdivision for sanitary and public health purposes. It would require the Water Quality Bureau to review all subdivisions of land.

Senator Roskie wondered if the county sanitarian should be the person to notify the department of any subdivision. Representative Meloy stated that the county sanitarian should be the particular person to do the job since he would be the first one to know. Rep. Meloy added that he wouldn't object if the committee amended the bill allowing the county clerk and recorder to be placed in lieu of the county sanitarian.

CONSIDERATION OF HJR 52: Calling on the administrator of the Environmental Protection Agency to collect baseline data on the quality of water and air in the Poplar River area and to study possible effects of the Poplar River power project on air and water quality in Montana.

Representative Gary Kimble, author, testified before the committee.

Since the intent of this bill is included in Ora Halvorson's bill, Senator Jergeson felt it should be tabled. If Representative Halvorson's bill passed, HJR 52 would not be needed.

DISPOSITION OF HJR 52: Senator Jergeson moved that HJR 52 BE TABLED. The motion was seconded by Senator Galt; it carried unanimously.

DISPOSITION OF HB 659: Senator Galt moved that HB 659 BE CONCURRED IN. The motion was seconded by Senator Manley; the motion carried unanimously. Either Senator Smith or Senator Jergeson volunteered to carry the bill on the floor.

DISPOSITION OF HB 369: Senator Jergeson moved the amendments proposed by the committee be adopted. The motion was seconded by Senator Watt and carried unanimously. (See standing committee report form for the amendments.) Senator Roskie further moved that HB 369 AND AS SO AMENDED, BE CONCURRED IN. The motion was seconded by Senator Manley; the motion carried unanimously. Senator Roskie volunteered to carry the bill on the floor.

DISPOSITION OF HB 341: Senator Manley moved that HB 341 BE CONCURRED IN. The motion was seconded by Senator Jergeson, and it carried unanimously. Senator Greely assumed the responsibility of carrying the bill on the floor.

ADJOURNMENT: There being no further business to discuss, Senator Flynn adjourned the meeting at 9:35 p.m.

Elmer Flynn

SENATOR ELMER FLYNN, CHAIRMAN

ROLL CALL

Natural Resources and Fish & Game COMMITTEE

Date 3-14-75

44th LEGISLATIVE SESSION -- 1975

NAME	PRESENT	ABSENT	EXCUSED
FLYNN, Elmer, Chairman	✓		
COLBERG, Richard A., V. Ch.	✓		
JERGESON, Greg	✓		
MANLEY, John E.	✓		
WATT, Robert D.	✓		
GALT, Jack E.	✓		
ROSKIE, George F.	✓		
SMITH, Edward B.			✓

ATTACHMENT #1

missoula planning board
city hall, 201 west spruce
missoula, montana 59801

406 728-1561

March 14, 1975

Senator Richard A. Colberg
Montana Senate, State Capitol
Helena, Montana 59601

Dear Senator Colberg:

I am writing in regard to House Bill 341 and to request your support at the public hearing before the Senate Natural Resources Committee.

As you know, the bill will allow for the voluntary dedication of conservation easements by private individuals. It is our feeling that such voluntary effort will do much to further the comprehensive planning process in Missoula County and throughout the State of Montana.

To cite an example - There are many property owners in the Swan Valley with holdings averaging one hundred and sixty (160) acres. For the most part, this is marginal timber land and, as such, the property cannot qualify for tax relief under the Greenbelt Law. With recent upward adjustments in taxable evaluations, these people are being forced to liquidate their holdings or to subdivide their land. In other words, the inflexibility of our tax laws is not only penalizing those who have selected a rural life style, but is dictating land use decisions as well. This negates the whole comprehensive planning process, wherein, land use decisions are based on citizen participation, socio-economic considerations and the physiographic limitations of the land. I would imagine there are many Swan Valley's in Western Montana where this same problem exists.

HB 341 would allow people in situations like Swan Valley to dedicate their land and reap the benefits of tax relief. HB 341 would also serve to endorse comprehensive planning by protecting the decision making process, wherein, citizens are allowed to act on land use policies and not forced to react to the results of arbitrary tax laws.

It is our hope that you would actively support this legislation. Please contact me if I may be of any assistance.

Very truly yours,

John H. Crowley

John H. Crowley
Planning Director

JHC:sp

ATTACHMENT 1

March 14, 1975

The Senate Natural Resources and Fish and Game Committee

Chairman Flynn and Members of the Committee:

My name is Hank Goetz and I live in the Blackfoot Valley east of Missoula. I had hoped to testify in person, however the impending birth of our child has precluded my appearance.

As a private citizen and as co-chairman of the Potomac-Greenough County Planning Advisory Group, I urge the passage of HB 341.

I assume that other proponents have testified to the general need and merits of the legislation. However there are two related aspects of the bill that I would like to emphasize. First of all this is a voluntary conservation easement program, which imposes no Federal or State requirements on the landowner. Secondly, we believe that this bill places the initiative for land use planning where it belongs: at the lowest possible local level. The members of our Advisory Group feel that this bill would be a very valuable aid in the determination of land use patterns in our area.

Thank you for the opportunity to testify,

Hank Goetz

Hank Goetz
Greenough, Montana

HOUSE BILL NO. 341

INTRODUCED BY SHELDEN, BRADLEY, STOLTZ, KIMBLE, DAY, HUENNEKENS, BERTELSEN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE OPEN SPACE LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608, 67-601, AND 67-602, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 62-601, R.C.M. 1947, is amended to read as follows:

"62-601. Short title. This act ~~shall be known and~~ may be cited as the "Open-Space Land and Voluntary Conservation Easement Act.""

Section 2. Section 62-602, R.C.M. 1947, is amended to read as follows:

"62-602. Purposes of act. The legislature finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; that the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; ~~that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas and to conserve land and other natural resources~~ that this population spread and its attendant development is disrupting and altering the remaining natural areas, biotic communities, geological and geographical formations and, thereby, providing the potential for the destruction of scientific, educational, aesthetic, and ecological values; that the present and future rapid population spread throughout the state of Montana into its open spaces, are creating serious problems of lack of open space and overcrowding of the land; that to lessen congestion and to preserve natural, ecological, geographical and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographic elements in their natural state; that the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve ~~permanent~~ open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of

4/17/95

REFERENCE BILL
Second Printing- Conference Report Included

authority to acquire or designate interests and rights in real property to provide or preserve ~~permanent~~ open-space land and the expenditure of public funds for these purposes would be for a public purpose~~.~~; and that the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

~~Pursuant to~~ In accordance with these findings, the legislature states that the purposes of this act are to authorize and enable public bodies and certain qualifying private organizations voluntarily to provide ~~and preserve permanent open-space land in urban areas in order to assist in the solution of the problems and the attainment of the objectives stated in its findings~~ for the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic or educational interest, and to provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years, and, furthermore to encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this act."

Section 3. Section 62-603, R.C.M. 1947, is amended to read as follows:

"62-603. Definitions. The following terms whenever used or referred to in this act shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) "Public body" means the state, counties, cities, towns and other municipalities.

(b) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(c) "Open-space land" means any land ~~in an urban area~~ which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

(d) "Comprehensive planning" means planning for development ~~of an urban area~~ and shall include: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public

facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programming and financing plans for capital improvements; (3) co-ordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in support of the foregoing.

(e) "Conservation easement" means an easement or restriction running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction, any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than fifteen (15) years. An easement granted for a term of years may be renewed for a term of fifteen (15) or more years upon the execution of a new granting instrument by the parties. A CONSERVATION EASEMENT MAY BE APPLIED TO URBAN OR NONURBAN LAND.

(f) "Qualified private organization" means a private

organization: (1) competent to own interests in real property; and (2) which qualifies and holds a general tax exemption under the Federal Internal Revenue Code, section 501 (c); and (3) whose organizational purposes are designed to further the purposes of this act."

Section 4. Section 62-604, R.C.M. 1947, is amended to read as follows:

"62-604. Acquisition and designation of real property by public body. To carry out the purposes of this act, any public body may (1) acquire by purchase, gift, devise, bequest or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of ~~permanent~~ significant open-space land, ~~and~~ or the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both, (2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of ~~permanent~~ significant open-space land~~.~~; ~~The use of the real property for permanent open space land shall conform to comprehensive planning being actively carried on for the urban area in which the property is located.~~ or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of

scientific, aesthetic, or educational interests, or both.

Where a public body acquires under this act an interest in land less than fee, this acquisition shall be by conservation easement. Public bodies holding conservation easements shall enforce the provisions of these easements."

Section 5. Section 62-605, R.C.M. 1947, is amended to read as follows:

"62-605. Conversion or diversion of open-space land, where prohibited--substitution of other realty--conveyance or lease of open-space land authorized. ~~(a)~~ (1) No open-space land, the title to, or interest or right in which has been acquired under this act ~~or which has been designated as open-space land under the authority of this act~~ shall be converted or diverted from open-space land use unless the conversion or diversion is: ~~determined by the public body to be (1) essential to the orderly development and growth of the urban area, and (2) in accordance with the program of comprehensive planning for the urban area in effect at the time of conversion or diversion~~ (a) necessary to the public interest; (b) not in conflict with the program of comprehensive planning for the area; and (c) permitted by the conditions imposed at the time of the creation of the conservation easement. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as

~~permanent~~ open-space land shall be substituted within a reasonable period not exceeding one (1) year for any real property converted or diverted from open-space land use. ~~The public body shall assure that the property~~ Property substituted ~~will be~~ is subject to the provisions of this act.

~~(b)~~ (2) A ~~public body~~ grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection ~~(a)~~ (1) of this section."

~~Section 6. Section 62-608, R.C.M. 1947, is amended to read as follows:~~

~~"62-608. Taxation of property subject to conservation easement, where public body owns less than fee. Where an interest in real property less than the fee is held by a public body for the purposes of this act, assessments made on the property for taxation shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property~~

~~taxation-to-the-same-extent-as-other-property-owned--by--the public-body.~~

~~Assessments-made-for-taxation-on-property-subject-to--a conservation--easement-either-in-perpetuity-or-for-a-term-of years-shall-be-determined-on-the--basis--of--the--restricted purposes--for--which-the-property-may-be-used.--The-value-of the-interest-held-by-a-public--body--or--qualifying--private organization-shall-be-exempt-from-property-taxation.~~

~~Expiration--of--an-easement-granted-for-a-term-of-years shall-not-result-in-a-reassessment-of-the-land-for--property tax--purposes--if--the--easement-is-renewed-and-the-granting instrument-reflecting-the-renewed-easement-is--executed--and properly--filed--not--later-than-fifteen-(15)-days-after-the date-of-expiration.~~

SECTION 6. SECTION 62-608, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"62-608. Taxation of property subject to conservation easement. ~~where-public-body-owns-less-than--fee.~~ ~~Where--an interest--in--real--property--less-than-the-fee-is-held-by-a public-body-for-the-purposes-of-this-act,--assessments--made on-the-property-for-taxation-shall-reflect-any-change-in-the market--value--of--the--property--which--may-result-from-the interest-held-by-the-public-body.--The-value-of-the-interest held-by-the--public--body--shall--be--exempt--from--property taxation--to--the-same-extent-as-other-property-owned-by-the~~

~~public-body.~~

Assessments made for taxation on property subject to a conservation easement ~~either-in-perpetuity-or-for-a-term-of years-shall-be-determined-on-the--basis--of--the--restricted purposes--for--which--the--property--may--be--used~~ EITHER IN PERPETUITY OR FOR A TERM OF YEARS WHERE A PUBLIC BODY OR A QUALIFYING PRIVATE ORGANIZATION HOLDS THE CONSERVATION EASEMENT, SHALL BE DETERMINED ON THE BASIS OF THE RESTRICTED PURPOSES FOR WHICH THE PROPERTY MAY BE USED. THE MINIMUM ASSESSED VALUE FOR LAND SUBJECT TO AN EASEMENT CONVEYED UNDER THIS CHAPTER MAY NOT BE LESS THAN THE ACTUAL ASSESSED VALUE OF SUCH LAND IN CALENDAR YEAR 1973. ANY LAND SUBJECT TO SUCH EASEMENT MAY NOT BE CLASSIFIED INTO A CLASS AFFORDING A LESSER ASSESSED VALUATION SOLELY BY REASON OF THE CREATION OF THE EASEMENT. ~~IN-PERPETUITY,-OR-FOR--A--TERM OF--YEARS--WHERE--A--PUBLIC-BODY-HOLDS-THE-TERM-CONSERVATION EASEMENT,-SHALL-BE-DETERMINED-ON-THE-BASIS-OF-THE-RESTRICTED PURPOSES-FOR-WHICH--THE--PROPERTY--MAY--BE--USED,--PROVIDED, HOWEVER,--THAT--SUCH-ASSESSMENT-SHALL-NOT,-BY-REASON-OF-THIS ACT,-BE-REDUCED-BELOW-THE-VALUE-SUCH-PROPERTY-WOULD-HAVE-FOR AGRICULTURE-OR-SILVICULTURE-PURPOSES.--ASSESSMENTS-MADE--FOR TAXATION-ON-PROPERTY-SUBJECT-TO-A-CONSERVATION-EASEMENT--FOR A--TERM--OF--YEARS--WHERE-A-"QUALIFIED-PRIVATE-ORGANIZATION" HOLDS-THE-CONSERVATION-EASEMENT-SHALL-BE-DETERMINED--ON--THE BASIS--OF-THE-RESTRICTED-PURPOSES-FOR-WHICH-THE-PROPERTY-MAY~~

~~BE USED, PROVIDED, HOWEVER, THAT THE ASSESSED VALUE ON ANY LAND SUBJECT TO A CONSERVATION EASEMENT HELD BY A "QUALIFIED PRIVATE ORGANIZATION" FOR A TERM OF YEARS SHALL NOT, BY REASON OF THIS ACT, BE REDUCED BELOW THE CLASSIFICATION OR ASSESSED VALUE IN EFFECT AT THE TIME OF THE GRANT.~~

~~THE OBTAINING OF ANY TAX BENEFIT BY REASON OF THE GRANTING OF A CONSERVATION ESTIMATE SHALL NOT BE CONSTRUED AS A CONTINUING CONTRACT AND THE LEGISLATURE MAY REMOVE ANY SUCH TAX BENEFIT.~~ The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than fifteen (15) days after the date of expiration."

Section 7. There is a new R.C.M. section that reads as follows:

Easements — type allowed. Easement or restrictions under this act may prohibit or limit any or all of the following:

(1) Structures. Construction or placing of buildings, camping trailers, house trailers, mobile homes, roads, signs, billboards or other advertising, utilities or other

structures on or above the ground.

(2) Landfill. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

(3) Vegetation. Removal or destruction of trees, shrubs or other vegetation.

(4) Loam, gravel, etc. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance.

(5) Surface use. Surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition.

(6) Acts detrimental to conservation. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation or fish and wildlife habitat and preservation.

(7) Subdivision of land. Subdivision of land as defined in section 11-3861.

(8) Other acts. Other acts or uses detrimental to such retention of land or water areas in their existing conditions.

(9) The term "land" in subsections (2) and (3) above, includes land under water, and water, and water surface.

Section 8. There is a new R.C.M. section that reads as follows:

Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase or gift, devise, bequest, or grant, title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interest.

Section 9. There is a new R.C.M. section that reads as follows:

Conservation easements run with the land — enforceability. The provisions of sections 58-305, 58-306, and 58-307, notwithstanding, for the purposes of this act, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership and no conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement, or because such easement is an easement in gross.

Section 10. There is a new R.C.M. section that reads

as follows:

Assignability. For the purposes of this act, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise, and no conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership; provided that the assignees must be qualified under the terms of this act to hold a conservation easement.

Section 11. There is a new R.C.M. section that reads as follows:

Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review by the appropriate local planning authority for the county within which the land lies prior to recording. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have ninety (90) days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area.

Such comments will not be binding on the proposed grantor or grantee, but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority, or the local planning authority has indicated in writing it will have no comments, or ninety (90) days have elapsed, whichever first occurs.

Section 12. There is a new R.C.M. section that reads as follows:

Recording and description of land. All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries. The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the state department of revenue.

Section 13. There is a new R.C.M. section that reads as follows:

Enforcement. Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the

grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

Section 14. There is a new R.C.M. section that reads as follows:

Construction. This section shall not be construed to imply that any easement, covenant, condition or restriction which does not have the benefit of this act shall on account of any provisions hereof be unenforceable. Nothing in this act shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

Section 15. Section 67-609, R.C.M. 1947, is renumbered 62-617.

Section 16. Section 67-601, R.C.M. 1947, is amended to read as follows:

"67-601. Servitudes attached to land. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals, and

other things.

6. The right of transacting business upon land.

7. The right of conducting lawful sports upon land.

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.

9. The right of receiving water from or discharging the same upon land.

10. The right of flooding land.

11. The right of having water flow without diminution or disturbance of any kind.

12. The right of using a wall as a party wall.

13. The right of receiving more than natural support from adjacent land or things affixed thereto.

14. The right of having the whole of a division fence maintained by a coterminous owner.

15. The right of having public conveyances stopped, or of stopping the same on land.

16. The right of a seat in church.

17. The right of burial.

18. The right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land."

Section 17. Section 67-602, R.C.M. 1947, is amended to read as follows:

"67-602. Servitudes not attached to land. The

following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right of pasture, and of fishing and taking game.

2. The right of a seat in church.

3. The right of burial.

4. The right of taking rents and tolls.

5. The right of way.

6. The right of taking water, wood, minerals, or other things.

7. The right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land."

-End-